

# NEWPORT TRIAL GROUP

*A Professional Corporation*

April 10, 2015

**VIA EMAIL & U.S. MAIL**

L. Timothy Fisher  
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*Re: McKenzie v. Iovate Health Sciences International, Inc. et al.*  
District of Colorado Case No.: 1:15-cv-00643

Dear Counsel:

I am writing to meet and confer regarding the case captioned *McKenzie v. Iovate Health Sciences, U.S.A. Inc., et al.*, Case No. 1:15-cv-00643, filed in the District of Colorado on March 27, 2015. As recognized by your Notice of Related Action (Dkt. No. 5), the case captioned *Eashoo v. Iovate Health Sciences, U.S.A., Inc.*, Case No. 2:15-cv-01726, filed in the Central District of California on March 10, 2015, involves common questions of law and fact. In addition, both actions involve common claims.

We intend to move for an order to stay this action based on the first-to-file doctrine, as the *Eashoo* case was filed prior to this action. *See Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1299 (Fed. Cir. 2012); *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1156 (9th Cir. 2007); *In re: Gerber Probiotic Products Mktg. & Sales Practices Litig.*, 899 F. Supp. 2d 1378, 1379-80 (U.S. Jud. Pan. Mult. Lit. 2012); *Knutson v. Walker Grp., Inc.*, 343 F. Supp. 2d 971, 973 (D. Colo. 2004). Please advise whether you will oppose our Motion to Stay, and if so, please state your reasons.

Sincerely,

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Scott J. Ferrell, Esq.

SJF/mkj

cc: Dan Warshaw, Esq. (via email only)  
Bobby Pouya, Esq. (via email only)  
Matthew A. Pearson, Esq. (via email only)